

Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

Friday, July 12, 1996
9:30 am - 3:00 PM
Kea Lani Hotel, Wailea, Maui
Pikake Room

Meeting Minutes

Attendance

SAC Members present: Maile Bay, Hannah Bernard, Herman Chong Jr., James Coon, Beth Goodoni, Walter Haas, June Harrigan-Lum, Skippy Hau (for Francis Oishi), Louis Herman, Greg Kaufman, Richard Poirier (for OSP), Thelma Kia-Shimaoka, William Lennan II, Donna Liddicote, Craig MacDonald, James McCallum, Lt. Michael Neiningner, Jan Pinney, Robert Schroeder, Glen Soma, Claud Sutcliffe, Skip Weinstein.

Excused: Stan Butler, Marc Hodges, Paul Nachtigall
Others present: NOAA/SRD: Kellese Araki, Naomi McIntosh, Patrick Ryan,
Jean Souza, Allen Tom
Public: Cindy Canney, Paul Forestell, James Housh, Kris Hunter
The Maui News: Timothy Hurley

Distributed Materials

- Agenda
- Final minutes from third meeting

Welcoming Remarks / Approval of Minutes - Mr. Jim Coon

Issue of meeting minutes brought up by Mr. Greg Kaufman. He commented that the minutes are exhaustive and should be concentrated to the agenda. It is not necessary to present everything that was said. Mr. Allen Tom responded that NOAA staff will try to streamline the minutes but acknowledged that some SAC members have replied that detailed minutes are helpful and should be kept as is. Ms. Maile Bay, however, remarked that minutes from the previous SAC meeting were not completely accurate and did not reflect major discussions that took place.

Role of SAC

Mr. Coon: Stressed the need to form the sub-committees for Research and Education.

Mr. William Lennan pointed out that the Sanctuary is not fully approved, therefore SAC is not fully functional. It is not necessary for this board to enhance sanctuary yet. Once it is approved by the Governor then we can think about other things. Right now, however, we should focus on the EIS.

Mr. Coon: Agreed. This is our last shot at the EIS. We should try to finish the process today.

Mr. Lennan: Clarification from NOAA is needed on the EIS.

Mr. Greg Kaufman: Stated that the Sanctuary is here and it is congressionally designated. The decision now is whether state waters are to be retained. SAC is an advisory body to NOAA to advise SRD on sanctuary issues.

Ms. Maile Bay: The SAC's role is a temporal element. We should wait for the EIS to determine our role; protocol.

Mr. Lennan: If state waters are withdrawn, the Secretary of Commerce determines whether Penguin Banks is sufficient for NMS.

Mr. Skip Weinstein stated that we have a Sanctuary and it is our role to advise NOAA.

Ms. June Harrigan-Lum: If the Governor approves the Sanctuary at least we have an outline of what our role is. If the Governor does not approve the Sanctuary with the proposed statewide boundaries, we still need a community based model for protection of our coastlines. What are NOAA's timeline for EIS?

Mr. Tom informed the SAC that we are approximately 75% complete with incorporating the comments in the FEIS. We are looking at a September release on the FEIS. This is tentative and dependent on many different things. The FEIS could possibly be held up due to the presidential election.

Mr. Kaufman: Expressed concern about SAC communication procedures with the public. Would like to see SAC meet with public at will. Question is who represents SAC's views? Also questioned why the communication item got on the agenda. At the last meeting a discussion took place regarding the need to increase understanding and awareness of the Sanctuary for the Mayors and the public. Various public groups have been questioning why SAC members have not met

with their constituencies. Suggests that we follow the protocol set by SAC members at other Sanctuaries. This is especially important because the public is not aware of all changes that the EIS has gone through since the draft was released. Public should be updated and assured that their concerns have been addressed.

Dr. Walter Haas: As the representative for Kauai, I feel that it is my responsibility to keep people informed. I don't know how I feel about some of the issues that appeared on the survey. Mayor Kusaka has asked what difference it will make if the Governor okays the Sanctuary. I did not have an answer. Education and research are the focus; we need to be able define what kinds of education and research the Sanctuary will do.

Ms. Bay called for a motion to divide communication protocol and strategy into 4 categories:

- 1) Status of process
- 2) Role of SAC, individual members
- 3) Communications: NOAA, SAC, individual, State
- 4) Status of education and research in relation to the Sanctuary.

Mr. Weinstein: Seconded the motion.

Mr. Coon asked for further discussion

Dr. Craig MacDonald stressed the need to discuss regulation and boundary alternatives.

Mr. Kaufman pointed out that our role is already defined in the SAC charter. We need to follow this rather than redefine our role as a SAC. Committees were already formed for Boundary, Management, and Regulation. Working groups need to be formed for education and research.

Ms. Bay asked for clarification. SAC needs to discuss the role of the SAC, then focus on communication. We should not go back and forth on these issues.

Ms. Hannah Bernard: It is premature to form subcommittees before establishing communication w/ NOAA. Should eliminate category #2 (role of SAC). Need a subcommittee for category #4 (education and research). Wait on forming subcommittees until Sanctuary boundaries are determined.

Ms. Bay: Amended the motion - status of process of SAC; communication protocol between 4 stakeholders (NOAA, SAC, State, public).

Mr. Weinstein: Need to have distinct clarification of what we can/cannot say to public.

Ms. Harrigan-Lum: Should focus attention on EIS if it is due out mid-Sept. Should use what's written, then don't have to worry about what to say.

Dr. MacDonald: How are we going to report findings?

Mr. Tom: This meeting was set up to discuss protocol and is a little different. Reportings from the various committees that have been formed will be addressed in the FEIS.

Mr. Kaufman: The public needs to get an update of changes that have taken place. Need to develop an executive summary of the new changes that will appear in the FEIS. These changes can then be presented to the public so they can see what the SAC members have accomplished.

Mr. Tom: We are waiting until all the issues are flushed out. NOAA is not quite ready to release an executive summary. SAC could develop a working draft of the changes.

Mr. Kaufman: If the FEIS reflects something different than what the SAC was informed about (with regard to changes) then SAC members will demand to know why those changes were not included.

Ms. Beth Goodwin Goodoni: What happened with the press release? Are we still planning ads for the paper, TV, newsletters, etc.?

Mr. Coon: We are still waiting on letterhead. Cannot put anything out before we get this.

Mr. Kaufman: Is an ad appropriate? Should we do more of an executive summary?

Mr. Claud Sutcliffe: An executive summary would be a good idea. Can we get clarification on why the press release was not done? Was it due to a lack of time or to NOAA not wanting to put anything final out?

Mr. Weinstein: How are minutes of the meetings being made available?

Mr. Tom: The public can request a copy.

Mr. Kaufman: Motion to summarize all the known changes which will be incorporated in the FEIS. Motion seconded by Ms. Donna Liddicote.

Dr. Louis Herman: We also need to summarize suggestions of the SAC. (Members agreed)

Dr. MacDonald: Is this going to be a reflection of all members of the SAC?

Mr. Richard Poirier: This needs clarification. Also need to include an outline of the process so the public knows that the summary of changes may not appear in the FEIS. Suggest that changes from the draft and final EIS be identified in the summary rather than developing a separate summary.

Mr. Weinstein: What are we proposing to put out to the public that's not already in the minutes? Meeting minutes already available to public. Is a summary necessary?

Mr. Kaufman stressed the need to let public know that their ideas and concerns have been considered.

Mr. Coon: The executive summary will summarize all of the discussions identified in the minutes.

Ms. Goodoni: Agreed with comments made by Mr. Poirier. We need to outline the entire review process.

Dr. MacDonald: Who drafts it and how will members review it?

Mr. Tom: The executive summary needs to come from the SAC, be reviewed by the SAC, and voted on. Vote can be handled by the Chair.

Mr. Kaufman reiterated that the executive summary has to inform the public about issues that were discussed and assure them that concerns of the public were raised.

Mr Tom: Agreed that public has not been aware of all goings on with SAC & should be updated (i.e. OSP's trip to Washington DC for the purpose of the Sanctuary DEIS).

Dr. MacDonald: Need to clarify OSP statements as OSP statements. The public needs to know that those statements do not necessarily represent the sentiments of other state agencies.

Mr. Coon: Can we bring this item to a vote. (All members voted in favor)

Mr. Kaufman: (Nominated to be in charge of summary.) Suggested that secretary be responsible since information is already on disk.

Communication protocol

Mr. Coon: Communication protocol is next on the agenda. Since there is no protocol in the SAC charter, can we establish our own protocol? Is this appropriate?

Ms. Bay: Not familiar with protocol, but can we use other sanctuaries as a model?

Mr. Tom: This is possible.

Mr. Kaufman: How can we communicate with our constituency? Other SACs are going out and holding public forums. We should consider this.

Ms. Jan Pinney: Need to get to specifics for protocol - what we can and cannot do.

Mr. Lennan: If we hold public meetings, they should be cleared with the SAC. However, when we speak with our own individual constituencies we are not going to consult with SAC beforehand. How do we respond appropriately when public questions arise and individual SAC members are not able to consult the entire SAC. Are these questions going to be addressed appropriately?

Mr. Jim Housh: Public and private industries are confused in where to direct questions and concerns. They are not aware of who SAC members are.

Ms. Bay: A summary could lay out minutes and contact persons. This document could prove very helpful to all.

Ms. Goodoni: If different interest groups come to me with complaints or concerns, do I just give out contact numbers or do I address the problem myself?

Mr. Kaufman: We should create a directory that can be passed out at all meetings to provide contact numbers for the public. With regard to talking to people in general, I don't think we need "mother may I" permission. If individual SAC members hold public meetings, he (and other SAC members) would like to be informed. Certain issues may require other SAC members to attend the meeting and provide information or give presentations. This can ensure that appropriate information gets out.

Dr. Herman: The general public needs to know who to address their concerns to, to effect change. For example, if you have a question about fishing this is who you need to voice it to. Needs to be included in the executive summary. Media may misinterpret positions the SAC may take and this may cause problems. Also supports the idea of informative meetings. These meetings will allow two-way communication.

Mr. Weinstein: Charter says no member can represent the SAC without the approval of the Manager. Individual SAC members cannot hold individual meetings.

Mr. Coon: Individually we can talk to our constituents. As SAC members we need to be careful on how we represent ourselves. If we make an official statement as a SAC member, then it needs to be voted on and officially documented on SAC letterhead.

Mr. Kaufman: Motion that SAC members have ability to freely discuss & attend meetings. SAC members are not to be the spokesperson for SAC, unless appointed. Formal or informal meetings can be held by SAC member (notification through media) with permission of SAC chair or on-site liaison. Other SAC members must be informed. (Motion seconded by Mr. Glen Soma).

Dr. Herman: Opposed to individual SAC members holding formal meetings with public. Formal meetings should be held by the SAC as a group. This is a function of SAC or Sanctuary manger to perform, not a function of individual SAC members.

Mr. Kaufman: Want to restate that these meetings would be informal and just to provide information to public on my (individual) views on the SAC/sanctuary. Informal meetings consist of notices being sent to a mailing list of people to let them know I will be at a certain location to talk to people.

Ms. Harrigan-Lum: Formal meetings are very systematic. If you are part of someone else's meeting to speak about the SAC, then this would be considered informal. If we plan to have a formal meeting it is organized with several members of the SAC and a process to hold this meeting will be developed. We should consult with other SAC members prior to meeting to determine what will be discussed.

Dr. MacDonald: What Greg described is a formal meeting. Formal meetings should be held with the knowledge of other SAC members. Media may come to the meetings and may misrepresent the issues. This will open up a Pandora's Box.

Mr. Tom: Agrees with Craig.

Mr. Weinstein: Suggest modification to Greg's motion by including other SAC members in a formal meeting.

Mr. Kaufman: The heart of the Sanctuary will be to have working groups on each island and independent meetings will need to be held.

Mr. Weinstein: Formal meetings need to be held with the direction of the Chair and not done individually. Individual members should not be allowed to call or advertise their own meetings. It should come from NOAA or SAC.

Dr. Herman: I think it would be advisable to not support the motion as stated. Need to restate the motion by not allowing individual members to hold meeting on their own.

Mr. Kaufman: Feel strongly that members of the SAC should be able to call a meeting of his constituency.

Ms. Goodoni: NOAA has had meetings and has been in the crossfire. Why can't the SAC go along with NOAA to meet with people?

Dr. MacDonald: It may be better to conduct it in this manner.

Mr. Housh: SAC members need to go out to their constituency.

Mr. Sutcliffe: We should send out a summary of minutes to the media. DEIS outlines the Charter.

Mr. Weinstein: People (the public) need to know who each SAC member represents.

Dr. Herman: It was the intention of this group to let people know who SAC members represent. This should be done in the executive summary. Following this, the SAC should hold meetings.

Ms. Bay: We should not take ourselves too seriously. We should not be afraid to talk with the public and be available to them. If people (SAC members) want to call meetings, that should be their entitlement. Let people call a meeting if they want. (Ms. Bay supports Mr. Kaufman's motion).

Mr Poirier: Maybe we need to distinguish between constituency and general public. Let SAC members call meetings of constituency and formalize general public meeting. SAC chair should be notified about any meetings.

Mr. Paul Forestell: SAC needs to focus on providing information to the Sanctuary (manager), not providing information to the public. Although, the process is a two-way thing, the SAC needs to gather information from the public as well. You should not put limitations on holding meetings. There has to be every opportunity taken to inform/advise the public on the sanctuary.

Mr. Kaufman: Don't create a closed door policy.

Mr. Walter Haas: We already have people inquiring about being on working groups. The SAC needs to wait to form these groups until after the Governor makes his decision on the sanctuary.

Mr. Weinstein: Clarified that if we have formal meetings, the SAC needs to be involved. Need to clear meetings with NOAA or the SAC chair because if the public is notified of such meetings, it may be interpreted as that SAC individual representing the SAC as a whole. That can be dangerous.

Ms. Bernard: I have a problem with the oppositional groups taking up all of our time. The public can come to these SAC meetings. We need to be careful holding these meetings because they (the public) can be influenced by oppositional groups.

Mr. Coon: Amended motion - Individual SAC members that wish to communicate with the public will be able to do so if they seek the permission of the Chair and will be allowed to hold these meetings. Do not need permission to hold meetings with their constituency.

Motion carried. Vote: Favor (18) Opposed (1)

Mr. Sutcliffe: Called for a motion to have an executive summary done within ten days. SAC will review and approve. Copies will be sent to the Governor, Mayors, county council, and all media. Greg will draft and fax summary to SAC members.

Dr. MacDonald: Will the letter Beth wrote be the starting point?

Mr. Kaufman: Request that any comments be sent to me.

All in favor.

Mr. Lennan: Fixated on FEIS, very interested in knowing if we will get a chance to look at a draft of the FEIS.

Mr. Tom: No, SAC will not be able to see the FEIS, but we will make any new information on the FEIS available as soon as possible.

Mr. Kaufman: Suggest this be an agenda item for next meeting: Mr. Tom to give briefing on dos and don'ts for communication protocol (public meetings).

Ms. Pinney: Called for a motion to develop letterhead for the SAC.

Mr. Tom will fax a logo for letterhead.

Greg's summary should be put on SAC letterhead.

Motion approved by unanimous verbal decision.

Mr. Coon: Charter requires specific disclaimer that all SAC correspondence must be on letterhead.

Mr. Kaufman: Offered to develop some choices for SAC to review.

LUNCH

Announcements:

- 1.. Mr. Tom: Jeff Benoit will be in Maui on Tuesday, August 13. A BBQ will be held at the sanctuary office at 4:00 p.m. All SAC members welcome to attend (call Allen for more information);
2. Mr. Kaufman: House is reviewing legislation to reduce NOAA's budget.
3. Mr. Tom: Reauthorization of Sanctuaries Act is currently being conducted by Congress.

NOAA's Communication

Sanctuary staff is restricted to the kind of communication staff has with Congressional staff. SAC is not limited by these rules.

Members of the SAC would like an opportunity to know what the FEIS will look like. SAC will not get the chance to review the FEIS before it is released.

Mr. Kaufman: During the 30 day cooling off period and the 45 day review, the community can send comments to the Governor if there is a major issue that had not been dealt with by NOAA.

Ms. Bay: Protocol needs to be developed for the future on who represents the SAC at meetings outside Hawaii (i.e. the Washington DC meeting). The State needs to communicate with the SAC if they initiate contact meetings with DC.

Mr. Poirier provided justification for State going to DC: OSP is the Governor's designated representative. We provided NOAA with information from the Governor about the Sanctuary and its position on various issues.

Sanctuary Boundary Committee Report - Lou Herman, Chair.

Committee Members: Hannah Bernard, Jim Coon, Lou Herman, Greg Kaufman, Craig MacDonald, Francis Oishi, and Claud Sutcliffe.

Dr. Herman presented a summary prepared by the Boundary Sub-committee. Committee members were contacted by fax and comments were received from five of the members.

Options in the DEIS are:

- 1) Congressionally designated boundary
- 2) Areas of highest concentration of whales as reported from aerial surveys.
- 3) NOAA preferred boundary
- 4) All islands out to 100 fathom isobath. All waters surrounding main Hawaiian Islands, excluding harbors and Kahoolawe.
- 5) All islands out to 1000 fathom isobath

There was no subcommittee consensus based on the comments received.

Member a) Prefers alternative 1. Smaller negative impact on human interests, public opposition will be lessened, combine with no new sanctuary regulations, focus on education and research.

Member b) Prefers alternative 4. Do not exclude harbors.

Member c) Prefers alternative 2. Does not propose to include all state waters.

Member d) Prefers alternatives 1 and 3. Alternative 1 recommends removal of waters off Kilauea point (Kauai), includes waters surrounding Kahoolawe and Oahu - increase sightings and equitable treatment. Modify Alternative 3 - do not exclude ports and harbors, Alternative 3 should be biologically based and provide adequate protection for whales. Minimal size needed for recovery.

Member e) Prefers alternative 3.

Dr. Herman asked if anyone wanted to add or discuss items further.

Mr. Kaufman: Committee sentiments reflect a wider range of alternatives than what NOAA has considered. Boundary modifications were suggested by committee. Should make sure that NOAA doesn't go forward w/out considering these alternatives.

Mr. Coon: Committee should continue to keep working towards a consensus.

Ms. Bernard: Should prioritize alternatives.

Dr. MacDonald: Boundary alternatives also involve regulatory alternatives.

Mr. Kaufman: It is important to determine the regulations within these boundaries. Should deal with this issue.

Management Committee Report - Greg Kaufman, chair

Most committee members were unavailable (on mainland), therefore unable to hold meeting. Comments were summarized from Maui County Task Force and other discussions. Did not get any comments/feedback from members on draft report

Draft report issues:

1. Facilitate coordination, cooperation
2. Identify resources for inclusion in sanctuary
3. Consider management zones rather than use exclusions. Promote areas of priority management. Language addresses relationships with other governmental agencies. Management should be broadened to include other agencies; forging partnerships with NGO's.
4. Document fails to discuss that humpback whales are in need of further protection - more so than other species.
5. Enforcement based on education and research, and voluntary compliance. less muscle (regulation) and more education
6. An administrative management regime should be considered. Create a Sanctuary management council who will head the program rather than have a single sanctuary manager.

Mr. Bernard: Management and research needs and recommendations from workshop should be incorporated into the FEIS.

Mr. Lennan: Any new management scheme has to have the approval of the Governor, which means the State. People are opposed to the Sanctuary because of the fear of new regulations.

Ms. Pinney: I'm concerned with user fees. There are no assurances that the State will not impose fees. SAC will be remiss if they did not address the possibility that the State will impose fees. The Sanctuary is a special area and fees may be implemented to protect it.

Mr. Kaufman: This can be included in the executive summary.

Mr. Haas : Need to look at the facts regarding the boundary. Preferred or existing are the only two real choices.

Dr. Herman: Other options are still viable. 1000 fathom option is unlikely to be accepted by DOD. (Dr. Herman agrees with Mr. Haas).

Ms. Harrigan-Lum: Please date all correspondence and documents. We need to identify who it was prepared by. This is particularly important for group memory & historical purposes.

Mr. Herman Chong: With regard to boundaries, Kauai has a problem with boundary. The highest concentration of whales is on the western side. This area can't be considered because of DOD. We can't consider highest concentrations. East and lee sides don't have justification. Kilauea Point makes more sense and it is backed by County Council. If you give everything away now (boundaries) you may not be able to take it back.

Dr. Herman: Will Kauai agree to the deletion of the Kilauea point area?

Ms. Bernard: Need some clarification. Boundary committee will continue its efforts and present more information to the SAC.

Dr. MacDonald: Walter's comments were a useful exercise and should be done for the regulation issues. If alternative 1 for regulations were adopted, then a statewide boundary could be more acceptable. The focus would be on research and regulations. If you have to go with the preferred alternative on regulation, then the designated boundary makes more sense because it will have less impact on the cross section of interests involved. If the Sanctuary is a success in the designated boundary then you can increase the boundary in five years.

Mr. Kaufman: If you appoint a committee on boundaries then the committee should sit on a panel to answer questions and provide information on boundaries to rest of SAC.

Dr. MacDonald: We should look at all alternatives and eliminate options from there.

Dr Herman will come up with a summary of boundary alternatives for the next meeting and provide background information.

Mr. Coon: The regulation subcommittee is intent on only one issue: intent to harass and innocent passage. Presented an Innocent Passage quote .

Ms. Bernard: Did we reach a consensus on that?

Mr. Sutcliffe requested information on that law for the SAC.

Mr. Kaufman: SAC cannot request that they rewrite law, can only request to revisit a law.

Mr. Lennan: Look at the exact wording of law and legislative history regarding the intent to harass. Make sure that we are not spending too much time on something that's not a problem.

Mr. Coon: The current approach regulations are unique to Hawaii.

Dr. Herman: Most regulations have been changed since its establishment in 1978.

Ms. Goodoni: If the sanctuary is approved, will there be more regulations put in place for other species? (Reply: no)

Dr. Herman: Will committee consider a penalty schedule for regulations? (Reply: Yes)

Mr. Coon: I spoke with someone involved in the Monterey sanctuary. The scope of their responsibility was resource protection, resource education, program modification. Mr. Coon also discussed the definition of working groups as outlined in the charter. The Monterey sanctuary has a broader representation than just SAC. It has many subcommittees - very effective. Would not be premature to set up similar committees here in Hawaii. Per Craig's suggestion, SAC should focus on education subcommittee which is already in place (Currently headed by Mr. Tom - this can be turned over to SAC).

Mr. Kaufman: Suggest that SAC members spend time on sanctuary site to see exactly what they are working towards. These committees should be open to everyone and led by a SAC member.

Dr. MacDonald: What is SAC's advising role in programmatic matters? Where is funding going?

Mr. Tom: Working groups will consult with SAC. SAC members will be the constituents.

Ms. Bernard: Selecting committee chairs is premature when the working group duties are not yet clear.

Ms. Harrigan-Lum: Stress that we are also working on a management plan (not just an EIS). Will NOAA adhere to the mgmt plan?

Mr. Tom: We have five years to work with this.

Meeting adjourned 2:30 PM

Next Meeting

A meeting with Native Hawaiian Issues is being planned for October, with Thelma working to coordinate speakers, in a roundtable format. Topics may include water rights, ceded lands and sovereignty. SAC members will be notified as to the time and place.